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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff-Appellee,

G.R. No. 233209

Present:

BERSAMIN, C.J., Chairperson,
DEL CASTILLO,
JARDELEZA,
GISMUNDO, and
CARANDANG, JJ.

- versus -

**HEROFIL OLARTE
y NAMUAG,**

Accused-Appellant.

Promulgated:

MAR 11 2019

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DECISION

GISMUNDO, J.:

The State's bounden duty to keep its people and those who sojourn within its territory safe from harm includes its obligation to protect their rights from any bureaucratic abuse. Striking a balance between utilizing sovereign police power and safeguarding mandated civil liberties has plagued adjudicators worldwide and has invited differing and sometimes divisive opinions. Nonetheless, courts are called upon to temper any philosophical debates and conflicting interests between law enforcement and protection of civil rights. This they can accomplish with lucid and objective decisions imbued with the wisdom of the Constitution and reflecting the majesty of the law and jurisprudence.

The Case

This is an appeal by accused-appellant Herofil N. Olarte (*accused-appellant*) seeking to reverse the April 6, 2017 Decision¹ of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01501-MIN which affirmed the January 27, 2016 Joint Judgment² of the Regional Trial Court, Cagayan de Oro City, Misamis Oriental, Branch 21 (*RTC*), in Crim. Case Nos. 2014-830 and 2014-831. Accused-appellant was convicted for violation of Republic Act (*RA*) No. 9516³ which amended Sections 3 and 4 of Presidential Decree (*P.D.*) No. 1866,⁴ and of Section 35, Article V of Republic Act No. 10591.⁵ The *RTC* *acquitted* accused-appellant of the charge of using an imitation firearm (.25 caliber pistol) in the commission of a crime (*R.A. No. 10591*) but *convicted* him of unlawfully carrying an M61 fragmentation grenade with an M204A2 fuse⁶ assembly without the necessary license or permit to possess it (*R.A. No. 9516*).

Antecedents

Accused-appellant was separately charged for illegal or unauthorized possession of a hand grenade and an unlicensed pistol (later found to be a replica). The relevant portions of the Informations⁷ are as follows:

Criminal Case No. 2014-830

That on July 19, 2014, at more or less 1:30 o'clock in the afternoon at LBC Pabayo-Chavez Streets, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, permit or license to possess or carry [an] explosive, did then and there willfully, unlawfully, criminally and knowingly have in his possession, custody and control, one (1) Fuze M204A2 Grenade without first securing the necessary license or permit to possess the same from the proper authorities.

Contrary to law.⁸

¹ *Rollo*, pp. 3-33; penned by Associate Justice Rafael Antonio M. Santos, with Associate Justice Oscar V. Badelles and Associate Justice Ruben Reynaldo G. Roxas, concurring.

² *CA rollo*, pp. 39-55; penned by Presiding Judge Gil G. Bollozos.

³ An Act Further Amending the Provisions of P.D. No. 1866, as amended, entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes (December 22, 2008).

⁴ Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes (June 29, 1983).

⁵ Comprehensive Firearms and Ammunition Regulation Act (May 29, 2013).

⁶ Also spelled and referred to as "fuze".

⁷ *CA rollo*, p. 39.

⁸ *Id.*

Criminal Case No. 2014-831

That on July 19, 2014, at more or less 1:30 o'clock in the afternoon at LBC Pabayo-Chavez Streets, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, permit or license to possess or carry [a] firearm, did then and there willfully, unlawfully, criminally and knowingly have in his possession, custody and control, One (1) Caliber .25 Pistol (Replica) without first securing the necessary license or permit to possess the same from the proper authorities.

Contrary to law.⁹

Version of the Prosecution

Police Officer 2 Reggie M. Intud (*PO2 Intud*) and Police Officer 2 Pablo B. Monilar, Jr. (*PO2 Monilar*) were members of Task Force "Boy Solo," a team formed in response to reports that a lone gunman was believed to be responsible for several robbery incidents at Pabayo and Chavez Streets in Cagayan de Oro City. On July 19, 2014, at around 1:30 P.M., PO2 Intud and PO2 Monilar were conducting discreet monitoring operations in the area.¹⁰ During their watch, they noticed a man walking towards a branch of LBC Express, Inc. (*LBC*), a commercial establishment. His features resembled "Boy Solo" whose image was shown in closed circuit television (*CCTV*) footages of past robberies in the area.¹¹ As "Boy Solo" was about to enter the establishment, he pulled out a firearm.¹² This prompted PO2 Intud and PO2 Monilar to immediately run towards the suspect.¹³ "Boy Solo," however, noticed the police officers running towards him so he ran away.¹⁴ "Boy Solo's" companions – Randy P. Tandoy, Dexter D. Caracho and Rodel B. Rubilla,¹⁵ acting as his lookouts, also fled from their posts. They all boarded a Cugman Liner, a public utility jeepney heading towards the Cogon Market.¹⁶ Eventually, accused-appellant was arrested near Ororama Superstore in Cogon after a chase by PO2 Intud and PO2 Monilar. His three companions were caught in a follow-up operation.¹⁷

⁹ Id.

¹⁰ *Rollo*, pp. 6, 13 and 15-17.

¹¹ Id. at 6 and 13-14.

¹² Id. at 6, 14 and 18.

¹³ Id. at 6 and 14.

¹⁴ Id.

¹⁵ *CA rollo*, p. 44.

¹⁶ *Rollo*, pp. 6 and 13-14.

¹⁷ Id. at 6.

During the arrest, PO2 Intud and PO2 Monilar searched accused-appellant's person and recovered a .25 caliber pistol replica, a fragmentation grenade with an M204A2 fuse assembly, a flathead screwdriver, and a transparent heat-sealed plastic sachet containing a white crystalline substance believed to be methamphetamine hydrochloride.¹⁸ PO2 Intud then wrapped the grenade with masking tape and marked it with his initials RMI2.¹⁹ Thereafter, the police officers brought accused-appellant to Police Station 1-Divisoria where the incident was recorded in the police blotter.²⁰ PO2 Intud then turned over the grenade to the prosecutor but the latter refused to take custody of it. He handed it to Chief Investigator Senior Police Officer 2 Allan Radaza (*SPO2 Radaza*) who, in turn, entrusted it to the PNP Explosive Ordnance Disposal (*EOD*) Team headed by SPO2 Dennis Allan Poe L. Tingson (*SPO2 Tingson*).²¹ SPO2 Tingson inspected the grenade and identified it as an M61 fragmentation hand grenade with an M204A2 fuse assembly. He issued an acknowledgement receipt²² and a certification²³ to the same.²⁴ Finally, the police officers found out that accused-appellant had no license or permit to possess the M61 hand grenade as well as the .25 caliber pistol, though a replica.²⁵

Version of Accused-Appellant

On July 19, 2014, accused-appellant boarded a passenger jeepney bound for Tablon, Cagayan de Oro City.²⁶ When the jeepney stopped in front of Ororama Superstore, two civilian-dressed persons suddenly approached. They bear-hugged and handcuffed him, then told him to go with them.²⁷ Startled, accused-appellant resisted, saying he did nothing wrong.²⁸ He was then brought by his captors to Police Station 1-Divisoria where his bag was confiscated.²⁹ Afterwards, another person came to the police station with a grenade and a pistol replica claiming that these were found inside accused-appellant's bag.³⁰ Accused-appellant was then forced by the police officers to admit to illegally possessing the grenade and imitation pistol.³¹

¹⁸ Id. at 14; see also: *CA rollo*, p. 43.

¹⁹ Id. at 6 and 29.

²⁰ Id. at 7.

²¹ Id. at 6-7 and 29.

²² Id. at 29, dated July 23, 2014.

²³ Id. at 30, dated July 28, 2014.

²⁴ Id. at 7-8 and 30-31.

²⁵ Id. at 8.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

The RTC Ruling

On January 30, 2015, the Hall of Justice of Cagayan de Oro City was razed by a fire which burned all the records therein including those pertaining to the original information and arraignment of accused-appellant, as well as some of the evidence presented by the prosecution.³²

On April 27, 2015, accused-appellant was re-arraigned. The prosecution undertook the retaking of the testimonies and the refile of judicial affidavits already executed by some of its witnesses, as part of the efforts to reconstitute the lost records.³³

In the course of reconstituting the records, the prosecution moved for the amendment of the Information in Criminal Case No. 2014-830 (illegal possession of hand grenade) seeking to change the reflected fuse assembly marking from "M204X2" to "M204A2." This was eventually granted by the RTC.³⁴

On January 27, 2016, the RTC rendered a joint judgment³⁵ finding accused-appellant guilty beyond reasonable doubt of illegal possession of a hand grenade, for the following reasons: (a) an accused may be arrested and searched without warrant when he/she is attempting to commit an offense;³⁶ and (b) frame-up, denial, and alibi are weak and self-serving defenses which cannot overcome the affirmative and straightforward allegations of the prosecution's witnesses.³⁷ However, it dismissed the case of illegal possession of a .25 caliber pistol replica against accused-appellant because the Information in Criminal Case No. 2014-831 was defective. It only alleged that the pistol replica was merely possessed and not used in the commission of a crime as contemplated in Section 35, Article V of R.A. No. 10591.³⁸ The dispositive portion of the Joint Judgment reads:

WHEREFORE, premises considered, the charge under Crim. Case No. 2014-831 is DISMISSED.

In Crim. Case No. 2014-830, this Court finds proof beyond reasonable doubt to find the accused GUILTY. The accused therefore is meted a penalty of imprisonment of *Reclusion Perpetua*. He is credited of (sic) the period that he is under preventive detention.

³² CA rollo, p. 40.

³³ Id.

³⁴ Id. at 33.

³⁵ Id. at 39-55.

³⁶ Id. at 52-53.

³⁷ Id. at 54.

³⁸ Id.

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The following are forfeited and confiscated in favor to (sic) the government:

1. One (1) Fuze M204A2 Grenade; and
2. One (1) Caliber .25 Pistol (Replica).

SO ORDERED.³⁹ (*italics supplied*)

The CA Ruling

On April 6, 2017, the CA rendered a decision⁴⁰ affirming the ruling in Crim. Case No. 2014-830 of the RTC, ratiocinating that: (a) accused-appellant never questioned the legality of his arrest until his appeal;⁴¹ (b) accused-appellant was validly arrested and searched without a warrant as he was caught attempting to commit a robbery, making the hand grenade admissible in evidence as it was validly obtained;⁴² (c) all the elements of the offense were adequately proven by the prosecution;⁴³ (d) the defenses of bare denial or frame-up are invariably viewed by courts with disfavor for they can easily be concocted;⁴⁴ (e) it does not matter if the fuse assembly marking on the grenade, as stated in the information (Criminal Case No. 2014-830), differs from that stated in the arresting officers' judicial affidavits; the alleged discrepancy being "clearly a clerical error" as supported by other documentary evidence (July 28, 2014 Certification, Seizure Receipt, and Extract Blotter), thereby justifying the amendment of the information;⁴⁵ (f) the identity of the grenade from the accused-appellant was not compromised even if the marking "RMI2" was not on the same grenade presented before the RTC; the prosecution adequately explained that the chain of custody remained unbroken as testified by all witnesses; (g) that the masking tape containing the same marking had been "removed and/or overlapped" with another strip of masking tape as per the July 28, 2014 Certification;⁴⁶ and (h) the RTC's assessment of the credibility of a witness is entitled to great weight and, sometimes, even finality which the appellate courts should not disturb because the trial judge had personally heard and observed the demeanor of the witnesses. The decretal portion of the CA decision reads, thus:

³⁹ *Id.* at 55.

⁴⁰ *Id.* at 91-121; *rollo*, pp. 3-33.

⁴¹ *Rollo*, p. 11.

⁴² *Id.* at 11-21.

⁴³ *Id.* at 21-22.

⁴⁴ *Id.* at 23.

⁴⁵ *Id.* at 23-31.

⁴⁶ *Id.* at 31-32.

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WHEREFORE, the conviction of the accused-appellant for the offense charged in Criminal Case No. 2014-830 in the assailed Joint Judgment dated 27 January 2016 rendered by the Regional Trial Court, Branch 21 of Cagayan de Oro City is hereby AFFIRMED.

SO ORDERED.⁴⁷

Hence, this appeal.

In its Resolution,⁴⁸ dated September 25, 2017, the Court required both parties to file their respective supplemental briefs, if they so desired.

On December 21, 2017, the Office of the Solicitor General, in its Manifestation and Motion,⁴⁹ opted the brief it filed before the CA as its supplemental brief. Accused-appellant, on the other hand, filed his Manifestation in lieu of Supplemental Brief,⁵⁰ stating that he is adopting *in toto* appellant's brief filed before the CA as it sufficiently and ably discussed the issues in the present case.

In his brief, accused-appellant presented the following arguments:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE ARREST OF ACCUSED-APPELLANT WAS LAWFUL.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.⁵¹

Parties' Arguments

Accused-appellant, who adopted his brief before the CA,⁵² insists that: (a) his arrest was illegal because PO2 Intud and PO2 Monilar merely assumed that he was "Boy Solo" based on CCTV footages and that "[o]ne cannot, without a warrant, arrest anyone based on similarities of [p]hysical attributes;"⁵³ (b) "[a] waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during the illegal

⁴⁷ Id. at 32.

⁴⁸ Id. at 40-41.

⁴⁹ Id. at 42-43.

⁵⁰ Id. at 51-52.

⁵¹ *CA rollo*, p. 23.

⁵² *Rollo*, pp. 51-52; *CA rollo*, pp. 16-38.

⁵³ Id. at 23-28.

warrantless arrest;”⁵⁴ (c) the *corpus delicti* is doubtful because, when the subject hand grenade was presented in court, the marking “RMI2” was not found on it and the fuse assembly marking stated in the original information did not match the grenade’s serial number;⁵⁵ and (d) the RTC should not have allowed the amendment of the original information to change the fuse assembly marking from “M204X2” to “M204A2” because it “affects the very identity of the grenade” and, thus, is clearly prejudicial to the accused.⁵⁶

On the other hand, the prosecution argues that accused-appellant was lawfully arrested and searched without a warrant because he was caught in the act of pulling out a firearm, even if it turned out to be a mere replica. Such act, absent any provocation, would pose an imminent danger to the people in the vicinity.⁵⁷ The prosecution’s witnesses (PO2 Intud, PO2 Monilar, SPO1 Tiongson, and SPO2 Radaza), who have held or in any manner dealt with the hand grenade, clearly testified as to the manner of its handling and the unbroken chain of custody.⁵⁸ It has already been clarified that the discrepancy as to the markings on the grenade’s fuse assembly, “M204X2” and “M204A2,” in both the original and amended informations as well as in the judicial affidavits, was merely a clerical error brought about by a misreading of the handwritten inventory of the confiscated items. This had been duly corrected with the permission of the RTC to conform to the evidence presented during trial.⁵⁹ Accused-appellant’s unsubstantiated defenses of denial, frame-up, and alibi are weak and have been invariably viewed by the courts with disfavor.⁶⁰ Lastly, accused-appellant failed to present any ill motive on the part of the police officers who arrested him. Neither did he file any case against them for alleged frame-up and torture.⁶¹

ISSUES

The issues for the Court’s resolution are:

WHETHER THE WARRANTLESS ARREST IS VALID AND THE HAND GRENADE SEIZED FROM ACCUSED-APPELLANT IS ADMISSIBLE IN EVIDENCE;

⁵⁴ Id. at 27-28.

⁵⁵ Id. at 28-35.

⁵⁶ Id. at 35-36.

⁵⁷ Id. at 77-79.

⁵⁸ Id. at 82.

⁵⁹ Id. at 82-83.

⁶⁰ Id. at 83.

⁶¹ Id. at 83-84.

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WHETHER THE ORIGINAL INFORMATION COULD BE VALIDLY AMENDED BY THE PROSECUTION TO REFLECT THE PROPER MARKING INSCRIBED ON THE HAND GRENADE'S FUSE ASSEMBLY;

WHETHER THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* HAVE BEEN COMPROMISED CAUSING ACCUSED-APPELLANT'S GUILT TO BE TAINTED WITH REASONABLE DOUBT.

THE COURT'S RULING

Legality of the Warrantless Arrest

A person may be validly arrested without warrant, as provided under Section 5, Rule 113 of the Revised Rules of Criminal Procedure, *viz.*:

Section 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, **in his presence**, the person to be arrested has committed, is actually committing, or **is attempting to commit** an offense;
- (b) When an offense **has just been committed**, and he has **probable cause to believe**, based on **personal knowledge of facts or circumstances** that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraph (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (emphases supplied)

The first instance in Sec. 5 of Rule 113, on which the subject arrest was premised, is known as an *in flagrante delicto* arrest where the accused was **caught in the act or attempting to commit**, already committing or having committed an offense. For a warrantless arrest of *in flagrante delicto* to be effected, two elements must concur: (a) the person to be arrested must **execute an overt act** indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is **done in the presence or within the view** of the arresting officer.⁶² Failure

⁶² *People v. Cogaed*, 740 Phil. 212, 238 (2014); emphases supplied; citations omitted.

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to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm.⁶³

The concept of *in flagrante delicto* arrests should not be confused with **warrantless arrests based on probable cause** as contemplated in the second instance of Sec. 5 of Rule 113. In the latter type of warrantless arrest, an accused may be arrested when there is probable cause which is discernible by a peace officer or private person that an offense “has just been committed.” Here, the offense had already been consummated but **not in the presence** of the peace officer or private person who, nevertheless, should have personal knowledge of facts or circumstances that the person to be arrested had committed it. More importantly, there is durational immediacy between the offense that had just been committed and the peace officer or private person’s perception or observation of the accused’s presence at the incident or immediate vicinity. Such is why probable cause is required to justify a warrantless arrest in cases where the peace officer or private person **did not catch or witness** the accused **in the act of committing** an offense.

“Probable cause” (in the context of warrantless arrests) has been understood to mean **a reasonable ground of suspicion supported by circumstances** sufficiently strong to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.⁶⁴ While probable cause to justify a warrantless arrest is required only in instances where the peace officer or private person who was present only at the time when the offense was committed believes (based on his/her immediate perception) that an offense had just been committed, some of its yardsticks for determination may be of help in ascertaining whether an accused is attempting to commit an offense. This is because the probable cause needed to justify a warrantless arrest ordinarily involves a certain degree of suspicion, in the absence of actual belief of the arresting officers, that the person to be arrested is **probably guilty** of committing the offense based on actual facts.⁶⁵ And such determination of reasonable suspicion “must be based on commonsense judgments and inferences about human behavior.”⁶⁶

Under the circumstances, PO2 Intud and PO2 Monilar had a reasonable suspicion to arrest accused-appellant who was seen to have drawn a gun as he was about to enter LBC. Common sense dictates that police officers need not wait for a serious crime, such as robbery, to be consummated before they move in and make the arrest because it will

⁶³ *Veridiano v. People*, G.R. No. 200370, June 7, 2017.

⁶⁴ *People v. Villareal*, 706 Phil. 511, 522 (2013); emphasis supplied, citation omitted.

⁶⁵ See *Judge Abelita, III v. P/Supt. Doria, et al.*, 612 Phil. 1127, 1134 (2009); citation omitted.

⁶⁶ *Illinois v. Wardlow*, 528 U.S. 119 (2000); citations omitted.

definitely endanger the lives and safety of the public, as well as their own. This is consistent with the jurisprudential *dictum* that the obligation to make an arrest by reason of a crime does not presuppose, as a necessary requisite for the fulfillment thereof, the indubitable existence of a crime.⁶⁷ Moreover, even if the firearm drawn turned out to be a replica, the police officers were not expected to know on sight whether the firearm was genuine or not, considering they had only a split second to act on any indication of danger. What was necessary was **the presence of reasonably sufficient ground to believe the existence of an act having the characteristics of a crime**; and that the same grounds exist to believe that the person sought to be detained participated in it.⁶⁸ As a result of the validity of the accused-appellant's warrantless arrest, the incidental search and seizure of the items in his possession is also valid "to protect the arresting officer from being harmed by the person arrested and to prevent the latter from destroying evidence within reach."⁶⁹

Additionally, accused-appellant's argument that the CCTV footage cannot be considered as a valid basis for his arrest fails to persuade. While it is a long-standing rule that reliable information alone (such as footage from a CCTV recording) is not sufficient to justify a warrantless arrest, the rule only requires that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense.⁷⁰ Therefore, it does not matter that accused-appellant was previously identified only from a CCTV footage supposedly covering his previous criminal conduct because **he was seen** by PO2 Intud and PO2 Monilar **performing an overt act of drawing a gun** as he was about to enter LBC.

Further, the assessment of the credibility of witnesses is within the province of the trial court by virtue of its unique position to observe the crucial and often incommunicable evidence of the witnesses' deportment while testifying, something which is denied to the appellate court because of the nature and function of its office.⁷¹ To be able to rebut a trial court's assessments and conclusions as to credibility, substantial reasons must be proffered by the accused.⁷² Relatedly, when it is decisive of the guilt or innocence of the accused, the issue of credibility is determined by the conformity of the conflicting claims and recollections of the witnesses to

⁶⁷ *People v. Ramos*, 264 Phil. 554, 569 (1990); citation omitted.

⁶⁸ *Pestilos, et al. v. Generoso, et al.*, 746 Phil. 301, 317 (2014).

⁶⁹ *People v. Calantiao*, 736 Phil. 661, 670 (2014); citation omitted.

⁷⁰ See *People v. Racho*, 640 Phil. 669, 678 (2010); citation omitted.

⁷¹ *People v. Esugon*, 761 Phil. 300, 311 (2015); citation omitted.

⁷² See *People v. Sanchez*, 681 Phil. 631, 635 (2012), citing: *People v. Laog*, 674 Phil. 444, 457 (2011); citations omitted.

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common experience and to the observation of mankind as probable under the circumstances.⁷³

Here, accused-appellant failed to rebut with affirmative evidence the testimonies of PO2 Intud and PO2 Monilar that he was caught in the act of drawing a gun as he was about to enter LBC. He never substantiated his claim, save for his self-serving account, that he was arrested without any reason. Moreover, the arresting officers' credibility was reinforced even more with their consistent corroborating statements under intense cross-examination. This reinforces the oft-repeated principle that trial courts are in the best position to weigh the evidence presented during trial and to ascertain the credibility of the police officers who testified.⁷⁴ Thus, the CA and the RTC properly gave more weight to the positive testimonies of the prosecution's witnesses over accused-appellant's defenses of denial and frame-up because these remained consistent even under the crucible of cross-examination.

At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; and will not even negate the validity of the conviction of the accused.⁷⁵ The legality of an arrest affects only the jurisdiction of the court over the person of the accused.⁷⁶ Furthermore, "[i]t is much too late in the day to complain about the warrantless arrest after a valid information had been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him."⁷⁷ It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he *fails* to raise this issue or to move for the quashal of the information against him on this ground *before* his arraignment.⁷⁸ Besides, only those pieces of evidence obtained after an unreasonable search and seizure are inadmissible in evidence for any purpose in any proceeding.⁷⁹

In this case, accused-appellant failed to timely question the illegality of his arrest and to present evidence (or at least some reasonable explanation) to substantiate his alleged wrongful detention. This renders the warrantless arrest and the accompanying search valid; thus, affirming the RTC's jurisdiction over his person and making all the items, confiscated from accused-appellant, admissible in evidence. Hence, the CA did not err

⁷³ See *Medina, Jr. v. People*, 724 Phil. 226, 228 (2014).

⁷⁴ See *People v. Mercado*, 755 Phil. 863, 874 (2015); *People v. Ocdol, et al.*, 741 Phil. 701, 714 (2014); *People v. Bautista*, 665 Phil. 815, 831 (2011); citations omitted.

⁷⁵ *Miclat, Jr. v. People*, 672 Phil. 191, 203 (2011); citation omitted.

⁷⁶ *People v. Nuevas, et al.*, 545 Phil. 356, 377 (2007).

⁷⁷ *People v. Emoy, et al.*, 395 Phil. 371, 384 (2000); citation omitted.

⁷⁸ *People v. Tan*, 649 Phil. 262, 277 (2010); citation omitted.

⁷⁹ *Comerciante v. People*, 764 Phil. 627, 633-634 (2015); citation omitted.

in affirming the RTC's validation of accused-appellant's warrantless arrest and incidental search.

Validity of the Amended Information

I. Amendment of an Information

No less than the Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and cause of accusation against him/her.⁸⁰ In this regard, every element constituting the offense must be alleged in the information to enable the accused to suitably prepare his/her defense.⁸¹ This is because an accused is presumed to have no independent knowledge of the facts that constitute the offense.⁸² Hence, the right to be informed of the nature and cause of accusation is **not transgressed if the information sufficiently alleges facts and omissions constituting an offense** that includes the offense established to have been committed by the accused.⁸³

Moreover, Sec. 14, Rule 110 of the Rules of Court provides that “[a] complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea[;] [a]fter the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.”⁸⁴ As deduced from the foregoing rule, there are two kinds of amendments to an information: (a) *substantial* amendments, and (b) *formal* amendments.

To date, there is no precise definition of what constitutes a substantial amendment;⁸⁵ although it was held that “it consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court”⁸⁶—all other matters are merely of form.⁸⁷ As to formal amendments, the Court first held in *People v. Casey, et al.*⁸⁸ that an amendment is merely formal and *not* substantial *if*: (a) it does not change the nature of the crime alleged therein; (b) it does not expose the accused to a charge which could call for a higher penalty; (c) it does not affect the essence of the offense; or

⁸⁰ *Canceran v. People*, 762 Phil. 558, 566 (2015); citation omitted.

⁸¹ *Andaya v. People*, 526 Phil. 480, 497 (2006); citation omitted.

⁸² *Balitaan v. Court of First Instance of Batangas, et al.*, 201 Phil. 311, 323 (1982); citation omitted.

⁸³ *People v. Manansala*, 708 Phil. 66, 68 (2013); emphasis supplied.

⁸⁴ *Banal, III v. Judge Panganiban, et al.*, 511 Phil. 605, 613 (2005).

⁸⁵ *Dr. Mendez v. People, et al.*, 736 Phil. 181, 191 (2014).

⁸⁶ *Ricarze v. Court of Appeals, et al.*, 544 Phil. 237, 249 (2007); *Almeda v. Judge Villaluz, et al.*, 160 Phil. 750, 757 (1975); citation omitted.

⁸⁷ *Teehankee, Jr. v. Hon. Madayag, et al.*, 283 Phil. 956, 966; citation omitted.

⁸⁸ See *People v. Casey, et al.*, 190 Phil. 748, 759 (1981); citation omitted.

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(d) it does not cause surprise or deprive the accused of an opportunity to meet the new averment. Moreover, the following have also been held to be mere formal amendments, *viz*: (a) new allegations which **relate only to the range of the penalty** that the court might impose in the event of conviction; (b) an amendment which does **not charge another offense** different or distinct from that charged in the original one; (c) additional allegations which **do not alter the prosecution's theory of the case so as to cause surprise to the accused** and affect the form of defense he has or will assume; (d) an amendment which **does not adversely affect any substantial right** of the accused; and (e) an amendment that **merely adds specifications to eliminate vagueness** in the information and not to introduce new and material facts, and merely **states with additional precision something which is already contained** in the original information and which **adds nothing essential for conviction** for the crime charged.⁸⁹

Notwithstanding the contrast between substantial and formal amendments, substantial amendments to the information are even permissible as long as the requirements of due process—that the accusation be in due form and the accused be given notice and an opportunity to answer the charge—are complied with.⁹⁰ Therefore, the Court will have to determine and explain in the succeeding discussions whether the amendment to the subject information was formal or substantial and whether such amendment either complied with or violated the requirements of due process.

II. Elements of Illegal Possession of Firearms, Explosives, Ammunitions or Incendiary Devices

The essential elements in the prosecution for the crime of illegal possession of firearms, which include explosives, ammunitions or incendiary devices,⁹¹ are: (a) the existence of subject firearm, and (b) the fact that the accused who possessed or owned the same does not have the corresponding license for it.⁹² Associated with the essential elements of the crime, the term "*corpus delicti*" means the "body or substance of the crime and, in its primary sense, refers to the fact that the crime has been actually committed."⁹³ Its elements are: (a) that a certain result has been proved (*e.g.*, a man has died); and (b) that some person is criminally responsible for the act.⁹⁴ In the crime of illegal possession of firearms, the *corpus delicti* is

⁸⁹ *Leviste v. Hon. Alameda, et al.*, 640 Phil. 620, 642 (2010); emphases supplied.

⁹⁰ See *Buhat v. Court of Appeals, et al.*, 333 Phil. 562, 575 (1996); citations omitted.

⁹¹ *Cf. Del Rosario v. People*, 410 Phil. 642, 660 (2001); citations omitted.

⁹² *Jacaban v. People*, 756 Phil. 523, 531 (2015); citation omitted.

⁹³ *Zabala v. People*, 752 Phil. 59, 69 (2015).

⁹⁴ *People v. Quimzon*, 471 Phil. 182, 192 (2004); citation omitted.

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the accused's *lack of license or permit to possess or carry* the firearm, as possession itself is not prohibited by law.⁹⁵ To establish the *corpus delicti*, the prosecution has the burden of proving that the **firearm exists** and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.⁹⁶ However, even if the existence of the firearm must be established, the firearm itself need not be presented as evidence for it may be established by testimony, even without the presentation of the said firearm.⁹⁷

III. Propriety of the Amendments

Before delving into the propriety of amending the original information, the Court clarifies and takes discretionary⁹⁸ judicial notice⁹⁹ of the fact that different *models of detonating fuses* used in hand grenade assembly are available in the market. These detonating fuses include the following **models**: M204A1, M204A2, M206A2, M213, M228, and the C12 integral fuse (to date, there is *no known fuse assembly model* denominated as “M204X2”).¹⁰⁰ It means that the marking denominated as “M204A2” on the fuse assembly of the subject grenade does not refer to the serial number—it pertains to the model number. This was explained by SPO2 Tingson during his cross-examination¹⁰¹ by accused-appellant’s counsel Atty. Arturo B. Jabines, III (*Atty. Jabines*), viz.:

[Atty. Jabines, III:] Mr. Witness, you testified that you recognize the grenade as the same grenade received by you at the police station at Divisoria because of the markings RMI2, is that correct?

[SPO2 Tingson:] Yes.

[Atty. Jabines, III:] And no serial number of the grenade was recorded?

[SPO2 Tingson:] All the unexploded ordnance [have] no serial number, the fuse assembly like the one mentioned by the police station (*sic*) that it was a[n] M204A2[;] it is the fuse assembly marking and not a serial number. (emphasis supplied)

⁹⁵ See: *Capangpangan v. People*, 563 Phil. 590, 598 (2007); citation omitted.

⁹⁶ *Sayco v. People*, 571 Phil. 73, 82-83 (2008); citation omitted.

⁹⁷ See *People v. Narvasa, et al.*, 359 Phil. 168, 179 (1998), citation omitted.

⁹⁸ The doctrine of judicial notice rests on the wisdom and discretion of the courts (See: *Spouses Latip v. Chua*, 619 Phil. 155, 164 (2009)).

⁹⁹ Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them (*Republic v. Sandiganbayan, et al.*, 678 Phil. 358, 425 (2011); citation omitted).

¹⁰⁰ See: <http://www.inetres.com/gp/military/infantry/grenade/hand.html> (last visited: November 26, 2018).

¹⁰¹ CA rollo, p. 41.

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Having settled that the marking “M204A2” on the fuse assembly of the grenade is *not* a *serial number*, the Court addresses the question: Is the amendment of the hand grenade’s *model*, as stated in the original information, *substantial*?

The Court answers in the negative.

Accused-appellant’s bone of contention as to the markings on the hand grenade’s fuse assembly is the discrepancy alleged in both the original and amended informations. Purportedly, this casts doubt on the source and negates the existence of the contraband. However, it is simply not enough to invalidate the amended information. A casual appreciation of the allegations in the original and amended informations immediately shows that accused-appellant had been carrying a hand grenade without a corresponding license; such effectively covering all the elements of the crime of illegal possession of an explosive device. It does not matter whether the model of the grenade’s fuse assembly was inaccurately alleged in the original information. The same argument still supports the conclusion that the questioned amendment does not prejudice accused-appellant’s rights; it does *not*: (a) charge another offense different or distinct from the charge of illegal possession of an explosive averred in the original information; (b) alter the prosecution’s theory of the case that he was caught possessing a hand grenade without a license or permit so as to cause him surprise and affect the form of defense he has or will assume; (c) introduce new and material facts; and (d) add anything which was essential for conviction. In effect, **the assailed amendment which reflected the correct model of the subject hand grenade merely added precision to the factual allegations already contained in the original information.** Besides, a change of the subject marking from “M204X2” to “M204A2” is an obvious correction of a *clerical error*—one which is visible to the eye or *obvious to the understanding*; an error made by a clerk or a transcriber; or a *mistake in copying* or writing.¹⁰² Accordingly, any amendment as to the discrepancy in the description of an element alleged in the information is evidentiary in nature and only amounts to a mere formal amendment.

Even assuming that the model number on the hand grenade is among the elements of illegal possession of explosives, it may still be amended under the circumstances **because accused-appellant was still afforded due process when he was apprised in the information that he was being indicted for illegally possessing a hand grenade;** the model number, even the serial number, being immaterial. The allegations in the original and amended informations sufficiently cover the element of the contraband’s existence as well as accused-appellant’s lack of license to possess the same.

¹⁰² *Republic v. Labrador*, 364 Phil. 934, 942 (1999); italics supplied.

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At this juncture, the Court stresses that the truth or falsity of the allegations in the information are threshed out during the trial. The matters contained in an information are allegations of ultimate facts which the prosecution has to prove beyond reasonable doubt to achieve a verdict of conviction. Conversely, an accused needs to rebut or at least equalize these matters by countervailing evidence in order to secure an acquittal. An accused cannot be allowed to seek an invalidation of the amended information, just because the information clarified one of the elements alleged inadvertently misstated by the prosecution in the original information. Hence, the RTC's act of permitting the amendment of the subject information, as affirmed by the CA, is permissible.

Admissibility of the Hand Grenade

I. Classifications of Object Evidence

Object evidence is classified into: (a) **actual, physical or "autoptic"**¹⁰³ **evidence:** those which have a direct relation or part in the fact or incident sought to be proven and those brought to the court for personal examination by the presiding magistrate; and (b) **demonstrative evidence:** those which *represent* the actual or physical object (or event in the case of pictures or videos) being offered to support or draw an inference or to aid in comprehending the verbal testimony of a witness.¹⁰⁴ Further, actual evidence is subdivided into three categories: (a) those that have readily identifiable marks (**unique objects**); (b) those that are made readily identifiable (**objects made unique**) and (c) those with no identifying marks (**non-unique objects**).¹⁰⁵

During the initial stage of evidence gathering, the *only* readily available types of actual evidence reasonably obtainable by law enforcers are unique objects and non-unique objects. On one hand, unique objects either: (a) *already exhibit identifiable visual or physical peculiarities* such as a particular paint job or an accidental scratch, dent, cut, chip, disfigurement or stain; or (b) *have a readily distinguishable mark* such as a unit-specific serial number in case of an industrially manufactured item. On the other hand, non-unique objects such as narcotic substances, industrial chemicals, and body fluids cannot be distinguished and are not readily identifiable; that

¹⁰³ *Autoptic preference*, in legal parlance, simply means a tribunal's self-perception, or autopsy, of the thing itself (*Balingit v. Commission on Elections, et al.*, 544 Phil. 335, 347 (2007); citation omitted).

¹⁰⁴ See *Smith v. Ohio Oil Co., et al.*, 10 Ill. App.2d 67 (1956).

¹⁰⁵ Riano, W.B., *EVIDENCE (The Bar Lecture Series)*, 2nd Ed. (2016), p. 107, citing: 29A Am. Jur., §§945-947.

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is why they present an inherent problem of fungibility¹⁰⁶ or substitutability and contamination which adversely affects their relevance or probative value. This is the reason why non-unique objects have to be made unique by law enforcers upon retrieval or confiscation in order for these articles to be authenticated by a sponsoring witness so that trial and reviewing courts can determine their relevance or probative value.

II. Authentication of Object Evidence

In its previous rulings, the Court had sought the guidance of U.S. courts in interpreting or explaining the rational basis underlying this jurisdiction's evidentiary principles. Some provisions of the Philippine Rules on Evidence (*Rules on Evidence*) were derived from or bear some semblance to some provisions of the Federal Rules of Evidence (*Federal Rules*). In this regard, Rule 902(a) of the Federal Rules pertaining to authentication and identification provides:

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

Admittedly, the practice of testimonial sponsorship of object evidence in the Federal Rules is not specifically mentioned in the Rules on Evidence. Nothing in the Rules on Evidence deals with the authentication of object evidence during the trial. Apart from the requirement of formal offer,¹⁰⁷ however, such practice is part and parcel of having an object evidence admitted, because authenticity is an inherent attribute of relevance—a component of admissibility.¹⁰⁸ The obvious reason is that an object offered in court as evidence but without having any part in the fact or event sought to be proven by the proponent is irrelevant because it has no “relation to the fact in issue as to induce a belief in its existence or nonexistence.”¹⁰⁹

Relatedly, the Court promulgated the Judicial Affidavit Rule¹¹⁰ which mandates parties to file, not later than five days before pre-trial or preliminary conference, judicial affidavits executed by their witnesses which

¹⁰⁶ The quality of being fungible depends upon the possibility of the property, because of its nature or the will of the parties, being substituted by others of the same kind, not having a distinct individuality (*BPI Family Bank v. Franco, et al.*, 563 Phil. 495, 506 (2007); citations omitted).

¹⁰⁷ RULES OF COURT, Section 35, Rule 132.

¹⁰⁸ See *State of Arizona v. Lavers*, 168 Ariz. 376 (1991), citations omitted.

¹⁰⁹ See *Gumabon v. Philippine National Bank*, 791 Phil. 101, 118 (2016), citing: Section 4, Rule 128, Rules of Court.

¹¹⁰ A.M. No. 12-8-8-SC (September 4, 2012).

shall take the place of their direct testimonies.¹¹¹ Here, parties seeking to offer documentary and/or object evidence are now required to describe, authenticate, and make the same evidence form part of the witness' judicial affidavit under the said Rule.¹¹² Therefore, as a rule, object evidence now requires authentication or testimonial sponsorship before it may be admitted or considered by the court.

Historically, the Court has applied the "chain of custody" rule as a mode of authenticating illegal drug substances in order to determine its admissibility.¹¹³ However, such rule has not yet been extended to other substances or objects for it is only a variation of the principle that real evidence must be authenticated prior to its admission into evidence.¹¹⁴ At this point, it becomes necessary to point out that the *degree of fungibility* of *amorphous objects* without an inherent unique characteristic capable of scientific determination, *i.e.*, DNA testing, is *higher* than stably structured objects or those which retain their form because the likelihood of tracing the former objects' source is more difficult, if not impossible. Narcotic substances, for example, are relatively easy to source because they are readily available in small quantities thereby allowing the buyer to obtain them at lower cost or minimal effort. It makes these substances highly susceptible to being used by corrupt law enforcers to plant evidence on the person of a hapless and innocent victim for the purpose of extortion. Such is the reason why narcotic substances should undergo the tedious process of being authenticated in accordance with the chain of custody rule.

In this regard, the Court emphasizes that if the proffered evidence is unique, readily identifiable, and relatively resistant to change, that foundation need only consist of testimony by a witness with knowledge that the evidence is what the proponent claims;¹¹⁵ otherwise, the chain of custody rule has to be resorted to and complied with by the proponent to satisfy the evidentiary requirement of relevancy. And at all times, the *source* of amorphous as well as firmly structured **objects** being offered as evidence **must be tethered to and supported by a testimony**. Here, the determination whether a proper foundation has been laid for the introduction of an exhibit into evidence rests within the discretion of the trial court; and a higher court reviews a lower court's authentication ruling in a deferential manner, testing only for mistake of law or a clear abuse of discretion.¹¹⁶ In

¹¹¹ Section 2 of A.M. No. 12-8-8-SC.

¹¹² Section 8(c) of A.M. No. 12-8-8-SC.

¹¹³ See *People v. Moner*, G.R. No. 202206, March 5, 2018.

¹¹⁴ *People v. Lim*, G.R. No. 231898, September 4, 2018; citation omitted.

¹¹⁵ 29A Am. Jur. 2d, *Evidence* § 945 (1994), p. 364; citation omitted.

¹¹⁶ *Id.* at 365; citations omitted.

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other words, the credibility of authenticating witnesses is for the trier of fact to determine.¹¹⁷

In the case at hand, the chain of custody rule does not apply to an undetonated grenade (*an object made unique*), for it is not amorphous and its form is relatively resistant to change. A witness of the prosecution need only identify the hand grenade, a structured object, based on personal knowledge that the same contraband or article is what it purports to be—that it came from the person of accused-appellant. Even assuming *arguendo* that the chain of custody rule applies to dispel supposed doubts as to the grenade's existence and source, the integrity and evidentiary value of the explosive had been sufficiently established by the prosecution. As aptly observed by the CA:

As previously stated, PO2 Intud, SPO2 Radaza and SPO2 Tingson positively testified as to the integrity and evidentiary value of the grenade presented in court, marked as Exhibit "B-1." PO2 Intud testified that it is the same grenade confiscated from the accused-appellant at the time of his arrest. SPO2 Radaza testified that it is the same grenade turned over [to] him by PO2 Intud. SPO2 Tionson testified that it is the same grenade turned over to him by SPO2 Radaza. Thus, there is no break in the chain of custody of the grenade confiscated from the accused-appellant.

As to the absence of the marking "RMI2" which was placed by PO2 Intud on the grenade marked as Exhibit "B-1," the same does not affect the evidentiary value of said object evidence. Said marking was placed by PO2 Intud on the grenade before it was turned over to the PNP[-] EOD for examination, as shown by the Acknowledgement Receipt dated 23 July 2014 prepared by SPO2 Radaza and duly received by SPO2 Tingson. However, after the examination conducted by the PNP[-]EOD where it was determined that the grenade had "Safety Pull Ring, Safety Pin, Safety Lever intact and containing COMP B (Co[m]position B) as Explosive Filler," the masking tape containing the marking "RMI2" was apparently removed and/or "overlapped" with another masking tape. As such, the Certification dated 28 July 2014 issued by SPO2 Tingson of the EOD Team no longer reflected the "RMI2" marking on the grenade. In any event, what is crucial is the testimony of SPO2 Tingson that the grenade marked as Exhibit "B-1" is the same grenade turned over to him by SPO2 Radaza.¹¹⁸

The above factual finding clearly shows that the source and existence of the subject grenade were authenticated by the prosecution's witness to be the very same explosive recovered from accused-appellant. SPO2 Radaza even testified that he saw PO2 Intud write his initials "RMI2" on the masking tape used to wrap the grenade and that the same initials were

¹¹⁷ *Id.* at 364-365; citations omitted.

¹¹⁸ *Rollo*, pp. 31-32; references omitted.

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covered by another masking tape.¹¹⁹ This makes accused-appellant's claim, that the apparent absence of the masking tape wrapping the hand grenade bearing the inscription "RMI2" makes "very doubtful" the *corpus delicti*,¹²⁰ an exercise in futility.

The Court also deems noteworthy that accused-appellant **never presented any evidence** which would effectively taint PO2 Intud's or any other prosecution witnesses' **credibility** with reasonable doubt. Bare and unsubstantiated allegations of ill motive or impropriety¹²¹ have no probative value and cannot (and will not) take the place of evidence.¹²² In this instance, the presumption that the prosecution's witnesses have been regularly performing their official duty should be upheld absent any clear and convincing evidence of ill motive.¹²³


Conclusion

In fine, the Court finds no reversible error in the CA's decision because: (a) the warrantless arrest as well as the incidental search on the person of accused-appellant is valid; (b) the amendment of the original information seeking the correction of a clerical error regarding the model of the illegally possessed grenade is merely evidentiary in nature and is not substantial to cause the invalidation of an amended information; and (c) the prosecution's witnesses have sufficiently laid down the testimonial foundations supporting the existence and confirming the source of the confiscated hand grenade.

WHEREFORE, in view of the foregoing, the Court **DISMISSES** the appeal of Herofil N. Olarte and **AFFIRMS** the April 6, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01501-MIN.

No costs.

SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

¹¹⁹ CA rollo, p. 31.

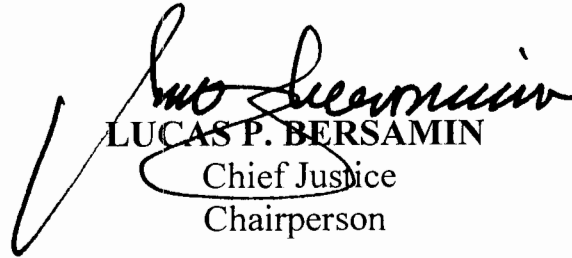
¹²⁰ Id. at 28.

¹²¹ Id. at 49.

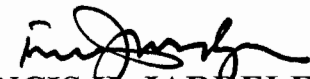
¹²² *LNS International Manpower Services v. Padua, Jr.*, 628 Phil. 223, 224 (2010).

¹²³ See: *People v. Alcala*, 739 Phil. 189, 198 (2014); *People v. Pagkalinawan*, 628 Phil. 101, 118-119 (2010).

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


FRANCIS H. JARBELEZA
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice

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